IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 710 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDULAL MANSUKHLAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 710 of 1999

MR DEEPAK M SHAH for the appellant

Ms. B.R. Gajjar, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 01/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant, by filing this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ('Code' for short), has challenged the judgment and order dated May 12, 1999, passed by the learned Additional Sessions Judge, Junagadh, in Sessions Case No.12 of 1996, by which judgment and order, the appellant was convicted for the offences punishable under Section 304 Part-II of the Indian Penal Code and sentenced to undergo R.I. for eight years and fine of Rs.1000/- in default S.I. for one month.

2. The prosecution case is as under: On October 7, 1996, the complainant, Ramaniklal Mansukhlal Soni, who was residing at village Bharwala, lodged First Information Report at 1.05 hrs. against the appellant for inflicting knife injury on his brother, Haresh. Haresh was taken in an auto-rickshaw to Bhesan Hospital, where, he was given the preliminary treatment and, thereafter, shifted to Junagadh Civil Hospital. On the way to Junagadh Civil Hospital, Haresh had succumbed to the injuries. PSI, Hansaben Joshi, recorded the complaint of Ramaniklal Mansukhlal Soni for the offence under Section 302 of the Indian Penal Code. The said complaint was registered as C.R. No.I-88/95 at Junagadh "A" Division Police Station. PSI, Hansaben Joshi, had held inquest of the dead body of Haresh and, thereafter, the dead body was sent for post-mortem. P.W.1, Dr. Tansukh Govindbhai Solanki, had performed post-mortem of the body of decease Haresh on October 7, 1996. PSI, Hansaben Joshi, had recorded statements of witnesses and arrested the appellant and seized the clothes put on by him and the muddamal knife which was used in the incident. The incriminating articles collected during the investigation were sent to the Forensic Science Laboratory and, on receipt of the report of the FSL, and after collecting the post-mortem notes, PSI, Hansaben Joshi, filed a chargesheet against the appellant for the offence under Section 302 of the Indian Penal Code in the Court of the learned Judicial Magistrate, First Class, Junagadh, which was registered as Criminal Case No.8949 of 1996. As the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions Judge, the learned Judicial Magistrate, First Class, by order dated January 11, 1996, committed the case to the Sessions Court, at Junagadh, where it came to be numbered as Sessions Case no.12 of 1996.

3. Charge Exh.1 was framed against the appellant for

the offence under Section 302 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant wherein he pleaded not guilty and claimed to be tried. The prosecution in order to prove the charge examined (1) P.W.1, Dr. Tansukh Govindbhai Solanki, Exh.7, (2) P.W.2, Ramaniklal Mansukhlal Dhakan, Exh.10, (3) P.W.3, Bharatkumar Mannsukhlal Dhakan, Exh.11, (4) P.W.4, Vinaykant Madhavji Gondaliya, Exh.12, (5) P.W.5, Ashok Udayshanker Bhatt, Exh.13, (6) P.W.6, Dhirubhai Ramsang Chauhan, Exh.16; (7) P.W.6/1, Devayat Meram Vaniya, Exh.22, (8) P.W.7, Hematlal Becharbhai Satodiya, Exh.23, (9) P.W.8, Mansukhbhai Chhaganbhai Dobariya, Exh.25, (10) P.W.9, Valji Raghavji Gondaliya Ex.27, (11) P.W.10, Jilubhai Amrubhai Ghaghal, Exh.28, (12) P.W.11, IO, PSI, Hansaben Narmadashanker Joshi, Exh.30. and (13) P.W.12, Jivrajbhai Bavabhai Patel, Exh. 32. The prosecution also produced documentary evidence such as First Information Report, inquest panchanama, post-mortem notes, panchanama and map of the place of incident, panchnama of discovery of muddamal knife, report of the FSL, injury certificate of deceased Haresh, etc. to prove the case against the appellant. After the prosecution evidence was over, the appellant was questioned against the evidence led by the prosecution and his evidence came to be recorded under Section 313 of the Code of Criminal Procedure.

4. After hearing the arguments of the learned advocates appearing for the parties, the learned Additional Sessions Judge deduced that deceased Haresh Mansukhlal Soni died homicidal death on October 6, 1995. It was further deduced that the appellant had inflicted blow with knife on the vital part of the body of deceased Haresh with intention to cause his murder and the injuries inflicted with the muddamal knife were sufficient in the ordinary course of nature to cause death of Haresh Mansukhlal Soni. However, the learned Additional Sessions Judge, in view of the circumstances in which the knife blows were inflicted on deceased Haresh, convicted the appellant under Part II of Section 304 of the Indian Penal Code and sentenced him to undergo R.I. for eight years and fine of Rs.1000 in default of S.I. for one month, which has given rise to filing of the present appeal by the appellant.

5. We have heard learned advocate Mr. D.M. Shah, who has been appointed to represent the appellant in this appeal, and learned APP, Ms. B.R. Gajjar. We have also gone through the entire record and proceedings of the appeal.

6. Learned advocate Mr. D.M. Shah appearing for the appellant has submitted that the prosecution had not proved beyond doubt that the appellant had inflicted injuries with the knife to deceased Haresh which had caused his death. The learned advocate for the appellant has submitted that the complainant had not supported the prosecution and turned hostile and the learned Additional Sessions Judge had only relied on the evidence of the brother of the appellant, namely, P.W.3, Bharatkumar Mansukhlal, who was in inimical terms with the appellant, to convict the appellant, which was erroneous. The learned advocate for the appellant has next submitted that the learned Additional Sessions Judge has totally misread the evidence led by the prosecution and, therefore, the conviction and sentence imposed on the appellant deserves to be quashed and set aside, and the appeal be allowed.

7. The learned APP, Ms. B.R. Gajjar, has supported the findings of the learned Additional Sessions Judge and has submitted that the evidence of P.W.3, Bharatkumar Mansukhlal, had proved beyond doubt that the appellant and he alone inflicted the knife injury on the person of deceased Haresh which had caused his death and, therefore, the appeal be dismissed.

8. The finding of the learned Additional Sessions Judge that the deceased Haresh died homicidal death deserves to be confirmed. The evidence of P.W.1, Dr. Tansukh Govindbhai Solanki, corroborated by the post-mortem notes and the ocular evidence of P.W.3, Bharatkumar Mansukhlal, proved beyond doubt that the deceased Haresh died homicidal death.

9. Though the complainant, P.W.2, Ramaniklal Mansukhlal Dhakan, had turned hostile, but P.W.3, Bharatkumar Mansukhlal, who is the brother of the appellant, had, in terms, deposed that he had seen the appellant and deceased Haresh quarelling with each other. The appellant was abusing and using filthy language in the village and deceased Haresh had scolded him not to speak such language. Therefore, the appellant and deceased Haresh had quarrelled with each other as a result of which the appellant got enraged and inflicted the knife blows on deceased Haresh. Though, P.W.3, Bharatkumar Mansukhlal, had no good relationship with his brother, appellant, but, his evidence cannot be discarded in toto. In our view, the presence of the witness at the place of the incident is quite natural and his testimony had gone unchallenged in cross-examination. P.W.3,

Bharatkumar Mansukhlal, emphathetically deposed that, when he had reached near the place of incident, he saw that the appellant was standing there with the knife in his hand. P.W.3, Bharatkumar Mansukhlal, in terms, deposed that the appellant had run towards deceased Haresh and inflicted knife blows on his body. He, further, deposed that the appellant had handed over the knife to the Sarpanch and run away. The knife which was seized at the place of incident was blood-stained and, as per the report of the FSL, Exh.18, the blood group, which was found on muddamal knife, was of the blood group of deceased Haresh. This corroborative piece of evidence also supports the prosecution case that the appellant alone had caused injuries to deceased Haresh with the muddamal knife. Though the complainant P.W.2, Ramaniklal Mansukhlal Dhakan, who had lodged the complaint against the appellant and in that complaint had mentioned the name of the appellant as assailant who had inflicted knife injuries on the deceased, did not support the prosecution during the trial, but, the fact remains that he had seen the deceased in a bleeding condition and had mentioned the name of the appellant as assailant who had caused injuries to deceased Haresh. There is no reason to discard the evidence of P.W.3, Bharatkumar Mansukhlal, who is an eye-witness and who had seen the incident when the appellant had inflicted knife injuries to deceased Haresh. P.W.3, Bharatkumar Mansukhlal, is the brother of the deceased as well as the appellant and he could not have falsely involved his real brother. In our view, the presence of P.W.3, Bharatkumar Mansukhlal, at the place of incident is quite natural and his evidence cannot be thrown on the ground that it is interested evidence and because of enmity with the appellant, he had falsely deposed against him. In our view, the learned Additional Sessions Judge had committed no error in holding that the appellant had inflicted the knife injuries on deceased Haresh which had caused his death.

10 The learned Additional Sessions Judge had convicted the appellant under Section 304 Part II of the Indian Penal Code as, prior to inflicting the injuries with the knife, there was a quarrel which might have given provocation to the appellant for inflicting injuries on deceased Haresh. Furthermore, the reasoning of the learned Additional Sessions Judge for convicting the appellant under Part II of Section 304 of the Indian Penal Code was that the injuries which were inflicted were on the thigh portion of the deceased and the appellant might not have the knowledge that such injuries would result into death of Haresh. In our view, taking into consideration the totality of the circumstances, and

the manner in which the incident had taken place, the learned Additional Sessions Judge had not committed any error in convicting the appellant under Part II of Section 304 of the Indian Penal Code and sentencing him to suffer R.I. for eight years and fine of Rs.1000 in default of S.I. for one month.

11 As a result of foregoing reasons, we do not find any merit in the appeal and there is no scope for interference with the conviction and sentence imposed by the learned Additional Sessions Judge on the appellant. The appeal is, therefore, dismissed. The muddamal be destroyed in terms of the directions contained in the impugned judgment.

(M.H. Kadri, J.)

(H.H. Mehta, J.)